

1 to as Doogie?

2 A. Yes, sir.

3 Q. Were there any other inquiries by RSO or DEA to Ohio
4 or Michigan databases for a picture of Darren Transou?

5 A. No. The Michigan data -- or the Ohio databases both
6 replied to me that they have no information relative to
7 Darren Transou in any of their databases.

8 Q. And he was a Detroit person, is that correct?

9 A. Yes, sir.

10 Q. The date June 7th, '06, is there any significance to
11 that date in terms of this investigation?

12 A. Yes, sir.

13 Q. And what is that?

14 A. That's approximately five days after -- I shouldn't
15 say "approximately" -- it is five days after Arrico Spires
16 participated in his proffer interview in accordance with his
17 plea.

18 Q. And the proffers are at Tab 1-B?

19 A. 1-B, yes, sir.

20 Q. In chronological order?

21 A. Yes, sir.

22 Q. And that would be --

23 A. I misspoke, sir. I did my math wrong.

24 It's six days after the proffer, not five.

25 Q. And who authored that report? I'm sorry, people are

1 recorded and monitored phone call to Brown at that same
2 419-610-1691 number basically to say that he purchased the
3 drugs but he didn't know who the person was, and that Brown
4 had assured him that person, he had sent that person on his
5 behalf to deal with Bray.

6 Q. The number, the 419 number according to Bray's toll
7 records, was that ever called?

8 A. The 419-610-1691?

9 Q. Yes.

10 A. No, sir, not at the times of the buy.

11 Q. Okay. And are there calls corresponding to Bray's
12 toll records matching up with the times of the calls on the
13 6?

14 A. Yes, sir, there are.

15 Q. What number is called?

16 A. The number that's called is -- oh, and this is
17 contained in the binders at Exhibit Number 17-C is the page
18 from Bray's phone records for that date, and it shows that
19 the DEA-6 -- I'm sorry -- the DEA-6 says that at 2:51 and
20 2:52 phone calls were made to that 1691 number.

21 The records show that at 2:49 and 2:51 there
22 are two calls, but they're to the number 419-520-5428.

23 Q. And have we seen that phone number before?

24 A. Yes, sir, we have.

25 Q. Where?

1 A. Way back on the September 6th of 2005 buy allegedly
2 with Noel Mott, the DEA-6 says in Paragraph 1 that Bray came
3 in and advised that he received an incoming call from Mott
4 at that -- from that number 419-520-5428.

5 Q. Now, speaking of Mr. Mott, there was an additional buy
6 with him?

7 A. Yes, sir, there was.

8 Q. Two days later on the 15th?

9 A. Yes, sir, there was.

10 Q. And could you -- we sort of have heard about this buy.

11 Could you sort of synopsisize for us what took
12 place according to the 6?

13 A. Yes, sir. Paragraph 1 says that again Mr. Lucas,
14 Mr. Verhiley, TFO Jamaal Ansari, Special Agent Robert Cross
15 and Captain Faith interview Bray relative to his ability to
16 buy crack from Mott.

17 It says that Bray says that he can contact
18 Mott on cell phone number 419-989-3247 and that Mott is
19 distributing crack from that 435 Tremont Avenue address.

20 It says at approximately 5:25 p.m. and
21 5:28 p.m., Bray made two monitored and recorded calls to
22 Mott at that 3247 number and that they -- and that Bray and
23 Mott agreed to meet at Ritchie's store which is located near
24 the 435 Tremont address in order to make a crack
25 transaction. Actually the 6 says located near Mott's

1 Q. Okay. Was there a Bray buy approximately one week
2 prior to 9/15?

3 A. Yes, sir, there was.

4 Q. And which buy was that?

5 A. That was the Ballard buy.

6 Q. How much was bought on that?

7 A. Three. It was supposed to be for three and a half
8 ounces. It was three that Bray actually bought on that buy.

9 Q. All right. And then that was the cobble phone, is
10 that correct?

11 A. Yes, sir.

12 Q. All right. And the same N 5, Track 2 is the body
13 recorder?

14 A. Yes, sir.

15 Q. Is there something unique about the -- when the body
16 recording is turned on or activated in this buy?

17 A. Yes, sir.

18 Q. And what is that?

19 A. The recorder, the body recorder is not turned on
20 during the actual buy, and it appears that Bray -- well, it
21 doesn't appear.

22 Bray turns it on after the buy is finished as
23 he's getting ready to leave before he gives that whole
24 commentary about needing his tail because the buy has
25 already gone down.

1 Q. Okay. And this starts about 20 seconds into Track
2 5 -- or Track 2, I'm sorry. N 5, Track 2? Okay.

3 (Tape playing).

4 THE COURT: Mr. Teitelbaum, unless you have
5 questions related to this that you want to wrap up with, I
6 think it's a good time to take our lunch.

7 MR. TEITELBAUM: It would be a great time.

8 THE COURT: Okay. So it's 12:30 now, so come
9 back at 1:30.

10 (Jury out).

11 (Luncheon recess taken).

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1 advised Bray that he'd be arriving shortly.

2 Paragraph 15 says that at approximately
3 9:14 p.m., Ansari observed a Buick Regal with Ohio temporary
4 tag number K 183223 arrive at the residence, and that
5 vehicle was registered to James Burton.

6 And then it says Ansari observed Albert Lee
7 driving the vehicle with Nabors as the passenger. It then
8 says Ansari observed them remove something from the driver's
9 door panel, and that Bray observed four kilo-sized bricks
10 being removed from that door panel.

11 And then it says Bray accompanied Lee and
12 Nabors into the residence where three females and the same
13 thin black male that Bray and Ansari had observed earlier
14 that same day at Brown's residence, and a black male named
15 Uncle Wee Wee, who was identified as James Burton, were also
16 observed.

17 Paragraph 16 says that Bray stated that Nabors
18 opened one of the kilo panels and removed some cocaine
19 powder from the package. That Bray stated it weighed out to
20 about 280 grams on Nabors' scale. That Bray stated that
21 Nabors gave Bray that package and that Bray departed the
22 residence and gave it to Ansari.

23 And that Bray was then searched again with
24 negative results.

25 It says that "Agent's Note: This package was

1 weighed by a scale at the Richland County SO and the DEA,
2 and weighed approximately 171.9 gross grams."

3 It says shortly after Bray and Ansari departed
4 460 Hill Street, the Buick Regal departed and was lost. And
5 it says at approximately 10:07 p.m. Bray again made a
6 monitored and recorded phone call to Nabors at that same
7 5107 phone number, and that in summary Bray advised Nabors
8 that he again shorted Bray on the drug amount, but Nabors
9 denied that the amount was short. And it says the
10 recordings and calls for the meetings will be known as N 8
11 C.

12 Q. So N 8 C are the phone calls at the last stage of the
13 process when Mr. Nabors is going to get the drugs, the
14 remaining drugs to bring them back, is that correct?

15 A. Yes, sir.

16 Q. The Cadillac that arrives at Platinum Status on the
17 first deal being driven by Mr. Nabors is registered to who?

18 A. Albert Lee, sir.

19 Q. The telephone number, the 5107 number, is
20 subscribed -- comes back to who?

21 Well, let me ask it this way: Was it the same
22 telephone number used shortly before in the Albert Lee buy?

23 A. Yes, sir.

24 Q. And the 6 acknowledges that, is that correct?

25 A. Yes, sir.

1 A. Yes, sir.

2 Q. And Bray has testified that the call is with Dwayne
3 Nabors?

4 A. Yes, sir.

5 Q. The telephone number, the number dialed, both
6 according to the 6 and according to the 6, comes back to
7 who?

8 A. Albert Lee, sir.

9 Q. How about Bray's phone records?

10 A. Bray's phone records shows the calls are to that
11 number.

12 Q. Albert Lee has been seen at a deal five days before in
13 a Cutlass?

14 A. Yes, sir.

15 Q. Mr. Bray buys that Cutlass?

16 A. Yes, sir.

17 Q. Referring back to the 6 for a minute, if you have to
18 look at it, what kind of car does Mr. Nabors have?

19 A. A Cadillac.

20 Q. And the Cadillac is spotted where, according to the 6?

21 A. At -- at Platinum Status, and later in the 6 it says
22 at 460 Hill.

23 Q. So it's parked out front of the business at Platinum
24 Status?

25 A. Yes, sir.

1 language sound familiar to you?

2 "Answer: The affidavit is correct. I believe
3 the transcription is wrong.

4 "Question: Well, I don't -- here's my
5 question. You prepared an affidavit that you presented to
6 Judge Alt, correct?

7 "Answer: Correct.

8 "Question: And you know from your training,
9 of course, as a law enforcement official who's been in the
10 business, what, more than 20 years?

11 "Answer: Well, 13. Go ahead.

12 "Question: I'm sorry, 13, forgive me.

13 "Answer: Yeah.

14 "Question: You know that when you swear an
15 affidavit in front of a Judge, that the Judge relies on the
16 information contained there, correct?

17 "Answer: Correct.

18 "Question: And you told Judge Alt that there
19 was a meeting or that the videotape, the transaction at 3:55
20 that you referenced here today in the parking lot, was
21 videotaped with Detective Metcalf and Sergeant Mayer, I mean
22 you said that to Judge Alt, right?

23 "Answer: Correct."

24 Q. The videotape of Platinum Status, was that played at
25 the Nabors trial?

1 A. No, sir, I don't believe it was.

2 Q. And --

3 A. It wasn't.

4 Q. And Metcalf indicated there wasn't one, is that
5 correct?

6 A. Correct, sir.

7 Q. Would the videotape or does the videotape establish
8 who Detective Metcalf was with at Platinum, whose car he was
9 in?

10 A. Yes, sir, it does.

11 Q. And who is that?

12 A. With Matt Mayer.

13 Q. And he testifies that he and Lucas together turn out
14 and identify Nabors as he leaves the parking lot, is that
15 correct?

16 A. Yes, sir. That's correct.

17 Q. And he testifies that by the time he is at Pleasant,
18 however, he is with Detective Mayer, Sergeant Mayer, is that
19 correct?

20 A. Yes, sir.

21 Q. And I believe the one section, he uses the phrase on
22 933, Lines 17, 18, what does he say?

23 A. He says "Sergeant Mayer and I hooked up later, and Lee
24 Lucas and Dawn Shavinski were together at that point."

25 Q. So he's distinguishing who's in which car between

1 Platinum and Pleasant, is that correct?

2 A. Yes, sir.

3 Q. Now, does Agent Lucas also testify to the events at
4 Platinum?

5 A. Yes, sir, he does.

6 Q. And in this trial, was Agent Lucas -- I'm sorry, I
7 didn't ask you, we've referenced a Dawn, and you said either
8 Brown or Shavinski.

9 Who is Dawn Brown, or are Brown and Shavinski
10 the same person?

11 A. Yes, sir, they are.

12 Q. And who is she?

13 A. Dawn Brown, and I don't remember which is her maiden
14 name and which was her married name, Dawn Brown or Dawn
15 Shavinski, they are the same person.

16 She is a detective who actually works for the
17 Richland County Sheriff's Office but is assigned to the
18 Metropolitan, Metropolitan Enforcement Team of Richland
19 County or we've heard it referred to here as METRICH.
20 They're the narcotics investigation unit in Mansfield and
21 the Richland County area.

22 Q. And did she participate in some of these buys?

23 A. Yes, sir.

24 Q. In what capacity?

25 A. As surveillance, sir.

1 Q. Now, I'm sorry, so Agent Lucas also testified as to
2 events surrounding the identification of Dwayne Nabors as
3 being in the Cadillac at Platinum Status?

4 A. Yes, sir, he does.

5 Q. And direct you to Tab 8 A, Page 1120. And this would
6 be direct examination, is that correct?

7 A. Yes, sir.

8 Q. And if you could read us, please, Page 1120, Line 5
9 through 1123, Line 25.

10 A. Beginning on 1120, Line 5.

11 "Question: Now, calling your attention to
12 the date of September 20th, 2005, was there a controlled buy
13 conducted on that day?

14 "Answer: Yes, there was.

15 "Question: And who was the target of that
16 controlled buy?

17 "Answer: Dwayne Nabors.

18 "Question: And do you know how much it was
19 supposed to be purchased from him?

20 "Answer: It was supposed to be a half kilo of
21 crack for \$10,000.

22 "Question: And what happened prior to the
23 actual controlled purchase?

24 "Answer: We had to get the money, which we
25 pooled our money together. 4,000 came from DEA, 3,000 from

1 the Cleveland Police Department, and 3,000 from Ohio BCI,
2 the State Police.

3 "Question: Now, in relation to that buy, what
4 were your duties on that day?

5 "Answer: It was basically the same thing. I
6 was the surveillance agent searching the informant, his
7 vehicle, and provided the money, and then I was the
8 surveillance agent on that day, also.

9 "Question: Were you by yourself or in company
10 of another officer?

11 "Answer: No, we started out myself and Chuck
12 Metcalf, we had the video camera and we set up across the
13 street.

14 "Question: And did you actually record or
15 videotape any activities on that date?

16 "Answer: We did -- I didn't. We started out
17 across the street from Nabors' business, it was a rim shop,
18 a music store, and it's right on one of the main roads, Park
19 Avenue, Parkview Avenue. It is one of the main roads in --

20 "Question: Park Avenue West?

21 "Answer: Park Avenue West in Mansfield. And
22 it has -- I think it's two lanes and two lanes on the other
23 side.

24 We were directly across the street in a car
25 dealership, and as we pulled up and we pulled in, a salesman

1 came up. He kept on talking to us so we were able to keep
2 surveillance on Jerrell Bray and Jamaal Ansari and security
3 for our \$10,000, but at that point we were not allowed to
4 video.

5 "Question: And while you were there, can you
6 tell us what you observed on that day?

7 "Answer: Parked in the lot was a white
8 Corvette and a black Cadillac, both that came back to Dwayne
9 Nabors.

10 "Jerrell Bray and Jamaal Ansari arrived.
11 Jerrell went in for a second. He went in for a short time,
12 came out. He advised Jamaal that Dwayne's not here yet.
13 Jamaal Nexteled me and told me he's not here yet.

14 "So we waited, and eventually a black --
15 another black Cadillac, a different one, this one was
16 registered to Albert Lee, arrived. And I saw Jerrell Bray
17 go up to the passenger side of this vehicle. There was some
18 motions like they were speaking. I obviously couldn't
19 overhear what was being said.

20 "And when the vehicle left, myself and Chuck
21 Metcalf, who were together, jumped in our car. We left.
22 They made a right pulling out of the lot. We had to make a
23 left to get behind them. We went up a distance until we
24 could pull up next to them.

25 "I identified Dwayne Nabors as being the

1 driver and there was another black male who at that time we
2 didn't have identified as the passenger.

3 "Question: Have you been able to identify the
4 second individual as of now?

5 "Answer: Yes.

6 "Question: And who was that?

7 "Answer: A guy named Davis.

8 "Question: Now, the individual that you
9 referred to as Dwayne Nabors, do you see him here in the
10 courtroom?

11 "Answer: I do.

12 "Question: Could you point him out and
13 identify him for the record?

14 "Answer: Yes. He's seated at the defense
15 table. He has a -- he's a bigger guy, he has a white shirt
16 on with a tie and he's seated at the end of the table.

17 "Mr. Serrano: May the record reflect he has
18 identified Dwayne Nabors?

19 "The Court: The record will so reflect.

20 "By Mr. --"

21 Q. Thank you.

22 So the method by which Mr. Nabors was
23 identified was pretty much similar to the method by which
24 Mr. Ballard was identified?

25 MR. ROTH: Your Honor, I object to

1 Mr. Teitelbaum testifying.

2 THE COURT: Okay.

3 MR. ROTH: That's not a question.

4 THE COURT: All right. Okay.

5 MR. TEITELBAUM: I'll --

6 THE COURT: Okay. Rephrase.

7 MR. TEITELBAUM: I didn't word that very good.

8 BY MR. TEITELBAUM:

9 Q. According to Agent Lucas at the Nabors trial, at
10 Platinum Status he was in the same vehicle with Detective
11 Metcalf, is that correct?

12 A. Yes, sir.

13 Q. And who is he with subsequently in his testimony by
14 the time he's at the second delivery point at Pleasant? I
15 know we can read it here --

16 A. Right. The DEA-6 says he's with Dawn Brown.

17 Q. Does he also testify to that at trial?

18 A. I believe he does, sir, yes, sir.

19 Q. And could you turn to Page 933, please, in that
20 same -- or did we just read that?

21 A. No, we are in the 1100s, sir.

22 Q. I'm sorry, I looked at the wrong thing. I'm sorry.

23 Now, we went to Pleasant and then the final
24 delivery is at Hill Street, is that correct?

25 A. Yes, sir.

1 Q. And you indicated that the 6 states at Paragraph 13
2 that the Nabors' Cadillac is observed as is Lee parked
3 outside of Hill Street during the final delivery, is that
4 correct?

5 A. Yes, sir. Paragraph 13 says both the Cadillacs are
6 there.

7 Q. And does the 6 attribute that identification to
8 anybody?

9 A. No, sir, it doesn't.

10 Q. During the trial was Jerrell Bray asked about the
11 Cadillacs -- who went into the house at 460 Hill?

12 A. Jerrell Bray did, sir.

13 Q. And who was with him at the location?

14 A. Ansari went to the location with him.

15 Q. Right.

16 A. Only Jerrell Bray went into the house.

17 Q. Right. Bray, did he go in the house?

18 A. Yes, sir, he did.

19 Q. Bray did. How about Ansari?

20 A. No, sir, Ansari did not go in the house.

21 Q. Where is he?

22 A. Ansari is outside in the car, in Bray's car.

23 Q. At the trial were either one of those two persons
24 asked whether or not they saw either of those Cadillacs at
25 Hill Street?

1 A. No, sir, they weren't.

2 Q. Did somebody testify to seeing Dwayne Nabors' Cadillac
3 at Hill Street?

4 A. Yes, sir.

5 Q. And who was that?

6 A. Mr. Lucas, sir.

7 Q. And would you turn, please, to Page 1130, Line 7. And
8 when everybody's set, read through 1132, Line 9.

9 A. Okay. Beginning on 1130, Line 7.

10 Q. Um-hmm.

11 A. It actually starts above, Line 6, it says:

12 "Question: Okay." Then 7 starts "Now, you
13 indicated at some point that you went over to a location on
14 Hill Street.

15 "Answer: Yes.

16 "Question: Would that have been 642 Hill
17 Street?

18 "Answer: Yes.

19 "Question: Would you know who actually had
20 any connections to that address, if you know?

21 "Answer: James Burton, whose street name was
22 Unc or Uncle or Uncle Wee Wee, and I believe Albert Lee was
23 also involved or seen at that residence throughout the
24 investigation.

25 "Question: And how long after the calls were

1 made did you actually go to the Hill location?

2 "Answer: It was probably four, close to five
3 hours later.

4 "Question: And did you actually go there to
5 Hill?

6 "Answer: Yes.

7 "Question: Were you by yourself or with
8 somebody else?

9 "Answer: No. I was with someone else in the
10 car.

11 "Question: And what did you observe at that
12 time when you went to Hill?

13 "Answer: The same black Cadillac that was
14 registered to Dwayne Nabors that I observed earlier at
15 Platinum Express, I saw two Cadillacs at Platinum Express
16 that day.

17 "Question: Platinum Status?

18 "Answer: Platinum Status, Dwayne Nabors' rim
19 shop, music shop. There was a white Corvette and a black
20 Caddy, and a second black Caddy arrived, but over at that
21 house on Hill was the black Caddy that was registered to
22 Nabors.

23 "Question: Did you see actually or can you
24 tell us approximately what time of the day or night it was?

25 "Answer: It was night. It was at night.

1 "Question: Was there a video recording of
2 this?

3 "Answer: No.

4 "Question: For what reason?

5 "Answer: We couldn't do one at night. And
6 that Jamaal, I was advised there were lookouts painting each
7 other.

8 "Mr. Shamansky: Object as to what he was
9 told, Your Honor.

10 "The Court: Sustained. Disregard the answer.

11 "By Mr. Serrano, question: Were you paying
12 attention to anything in particular based on the information
13 you had received?

14 "Answer: Yes.

15 "And what was that?

16 "Answer: Lookouts.

17 "Question: Now, while you were at the
18 location can you tell us what, if anything, you saw and what
19 happened?

20 "Answer: I observed a Regal arrive. It was
21 dark so I couldn't see who was in the Regal, but I saw a
22 Regal arrive later that had a temp tag on it. The temp tag
23 came back to a James Burton."

24 Q. Thank you.

25 Did Detective Dawn Brown-Shavinski testify at

1 the Nabors trial?

2 A. No, sir, she didn't.

3 Q. Is she referenced in the -- well, strike that. I
4 apologize.

5 The last reading section we did when we were
6 talking about the identification of Platinum, when we ended
7 on Page 1123, we ended with the identification, in-court
8 identification of Dwayne Nabors?

9 A. Yes, sir.

10 Q. At Page 1123, Line 9. And I apologize, I stopped you.
11 If you would go through Line 6 of the next
12 page.

13 A. Yes, sir.

14 THE COURT: Going back now to 11?

15 MR. TEITELBAUM: 1123, Line 11. I'm sorry, I
16 stopped Agent Thomas a little shy.

17 A. Okay. Starting on -- we read through Line 9.
18 Starting Line 10.

19 "The Court: The record will so reflect.

20 "By Mr. Serrano, question: Did there come a
21 time when you left the area or the immediate area of the
22 shop there on Park Avenue West?

23 "Answer: Yes.

24 "Question: Where did you go from there?

25 "Answer: Back to the -- back to the Richland

1 THE COURT: Okay. It's 2:53. Why don't we
2 take our 15 minutes now?

3 (Recess taken).

4 THE COURT: You may be seated.

5 I don't know how long you have been back in
6 here. There was a breakdown in the system because I have a
7 loud shrill buzzer that will get me when she punches that,
8 and it doesn't work.

9 THE CLERK: I asked Sue and she heard it
10 because it beeps out here, too.

11 THE COURT: Not at all.

12 THE CLERK: You'd come right out. I know.

13 THE COURT: Sorry. You may proceed.

14 MR. ROTH: Thank you, Judge.

15 CROSS-EXAMINATION OF KIMBERLY THOMAS

16 BY MR. ROTH:

17 Q. Ms. Thomas, could you just refer to whatever the first
18 DEA-6 is in Volume 1?

19 A. And that would be in Exhibit 1-A, Mr. Roth.

20 Q. Right. That's Volume 1, the general exhibit.

21 A. Yes, sir.

22 Q. Just turn to the first one.

23 A. Okay.

24 Q. I want to ask you some general questions.

25 A. All right, sir.

1 A. Correct, sir.

2 Q. And what is Mr. Transou's position as to whether or
3 not this is him on the Ballard deal?

4 A. When I interviewed Mr. Transou and --

5 Q. Yes.

6 A. -- and I spoke to him about it, he told us that it is
7 him at the Ballard deal and that -- you put your hand up.
8 Did you want me to stop?

9 Q. My question was not that.

10 My question was this conversation.

11 A. This particular conversation?

12 Q. This conversation.

13 A. Oh, I'd have to check my notes, sir.

14 My recollection is that two of the tracks he
15 agreed that it was him, and one of them he wasn't certain,
16 but again I'd have to check my notes to be certain.

17 Q. What about this one that we just played?

18 A. As I said, sir, I don't recollect which was which.
19 I'd have to check my notes.

20 Q. Okay. Did you, when you interviewed Mr. Transou, did
21 you ask him whether or not he had a drug relation with
22 Mr. Ballard?

23 A. I don't remember if I asked him that or not, sir.

24 Q. Well, in this conversation, the person you claim is
25 Mr. Transou is clearly making a drug reference to somebody

1 length of imprisonment for the July, 2005 drug deals?

2 A. Fifty-seven months.

3 Q. Did you serve all 57 months?

4 A. No, I did not.

5 Q. Why not, sir?

6 A. I was released.

7 Q. Do you know why you were released?

8 A. Because of the -- because of this case right here.

9 Q. And at some point after your release, did you meet
10 with Mr. Teitelbaum and Ms. Thomas?

11 A. Yes.

12 Q. And during that meeting did you sign an agreement
13 wherein any information you provided would not be used
14 against you?

15 A. Yes.

16 MR. COMBER: Nothing further.

17 THE COURT: All right. Cross-examination,
18 Mr. Roth.

19 MR. ROTH: Thank you, Judge.

20 THE COURT: You still want that on the screen?

21 MR. COMBER: Oh. Thank you, Your Honor.

22 CROSS-EXAMINATION OF ARRICO SPIRES

23 BY MR. ROTH:

24 Q. Mr. Spires, during your preparation with the
25 government to testify in this matter, did they play any

1 because it appears, from what you said, that maybe Mr. Bray
2 didn't turn in all the drugs that you gave him, am I
3 correct?

4 Is that what you were trying to say on direct
5 examination?

6 A. No, that wasn't -- wasn't what I was trying to say.

7 Q. Okay. Did -- I thought you said that you actually
8 sold Mr. Bray 5.7 grams?

9 A. That's what he turned in, sir.

10 Q. Oh, I see. So you sold him more than 5.7 grams, and
11 Mr. Bray turns in 5.7 grams?

12 A. Yes, I sold him 56.

13 Q. Okay. All right. So you sold him 56 grams and he
14 claims it's 5.7, correct?

15 A. No, he gave them 5.7 out of it.

16 Q. Sir, I'm confused.

17 You gave him how much?

18 A. Fifty-six grams.

19 Q. Grams. And then how does the 5.7 come in?

20 A. That's what I was charged with.

21 Q. Oh, I see. I see. But is it your understanding that
22 you were charged with 5.7 grams because Mr. Bray only turned
23 in 5.7 grams of the 56 that you gave him?

24 A. Yes.

25 Q. Okay. So he made out by not turning in all the drugs

1 And so the stipulation is as follows: The
2 parties hereby stipulate that at the Ballard trial, after
3 consultation with his attorney and following inquiry by the
4 Court where Mr. Spires responded under oath to the Court's
5 questions, Mr. Spires asserted his Fifth Amendment privilege
6 and did not testify before the jury.

7 So that's the stipulation. And the parties
8 have put that in writing and I've just read that to you.

9 Call your next witness.

10 MR. COMBER: Your Honor, the government would
11 call Sergeant Matt Mayer.

12 THE COURT: All right. Sir, as you could see,
13 the witness stand is here on my left.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: Go ahead. Before you
16 actually -- go ahead and step up. Before you actually sit
17 down, my deputy will swear you in.

18 MATT MAYER,
19 of lawful age, a witness called by the Government,
20 being first duly sworn, was examined
21 and testified as follows:

22 DIRECT EXAMINATION OF MATT MAYER

23 BY MR. COMBER:

24 **Q. Good morning, Sergeant.**

25 **A. Good morning.**

1 A. I checked with the senior high, they didn't have a
2 yearbook, they told me to go to the Ray Milton school which
3 they archive, they may have a yearbook.

4 I went out there, talked to the lady. She
5 said she didn't have a yearbook in that era because we kind
6 of estimated, you know, about the year or whatever, but she
7 did -- she was familiar with her and she said she had a, I
8 believe, a middle school picture attached to a file.

9 I took a photograph with a digital camera of
10 it.

11 Q. You took a photograph of the photograph, is that what
12 you're saying?

13 A. Yes.

14 Q. Okay.

15 A. And I wanted that for a benchmark just to get an idea.

16 At this point in time I don't know if it's
17 Geneva France. We can't find a picture to put her in a
18 lineup, and she's in middle school, so sometimes when people
19 go through puberty they change in height and size and facial
20 structure, so I didn't know how this was going to -- you
21 know, I just -- at the time I was doing this as a task of --
22 I don't know if it's Captain Faith, Metcalf, or whoever.

23 You know, I was just doing it as a task to get
24 a picture so we could try to put it in a photo lineup or at
25 least have a general idea if this is the person that sold

1 drugs to, I believe, Lee on an earlier date.

2 Q. Sir, about to show you a picture that's been marked as
3 one of our Joint Exhibits.

4 MR. COMBER: Mr. Roth, any objection to
5 displaying the picture to the jury?

6 MR. ROTH: No, no objection.

7 MR. COMBER: Your Honor, may we display the
8 picture?

9 THE COURT: You may.

10 MR. COMBER: Thank you.

11 THE COURT: Do we have an exhibit -- is there
12 an exhibit number?

13 MR. COMBER: Your Honor, I apologize. It's
14 one of our Joint Exhibits. I don't have the list in front
15 of me. I will get it to the Court and make sure it's part
16 of the record.

17 THE COURT: I want the record to be clear what
18 we are looking at.

19 MR. COMBER: Absolutely. I will provide it to
20 the Court. Thank you.

21 BY MR. COMBER:

22 Q. Sir, the picture that is on the screen in front of
23 you, do you recognize that picture?

24 A. It's been quite awhile, but that looks like the
25 picture I took of the picture.

1 Q. Okay. So that is the picture that you took of the
2 picture in Ray Milton school of Geneva France?

3 A. Yes, it looks like it.

4 MR. COMBER: One brief moment, Your Honor.

5 THE COURT: Sure.

6 (Pause).

7 BY MR. COMBER:

8 Q. Sir, after you -- I think we had the answer.

9 Thank you so much.

10 MR. COMBER: For the record, that was Exhibit
11 27.

12 THE COURT: All right.

13 MR. COMBER: Apologize, Your Honor, for not
14 having that at the ready.

15 BY MR. COMBER:

16 Q. Sir, after you obtained that picture, what did you do
17 with it?

18 A. I went back with it in my camera, made a still print
19 out of the computer.

20 Q. To whom did you provide the still print?

21 A. My memory would be Chuck Metcalf.

22 Q. At some point were you present when Jerrell Bray
23 identified that picture?

24 A. Yes.

25 Q. Please describe what happened.

1 A. One day after I gave it to Metcalf, probably within --
2 it could have been the same day, several days, I'm not sure,
3 I can't remember the time, I was in my office. My office is
4 the first one in line when you walk in from the outside
5 normal entrance of the detective bureau.

6 And when I'm on a task I try to finish it,
7 otherwise you could be interrupted all day. So I think I
8 heard it was Bray. I had my door about three-fourths shut
9 and I knew he was coming in to talk to Chuck or Larry. And
10 I take care of my business until they ask, you know, if I
11 could partake, and I just -- and I heard a commotion in
12 Chuck's office which is across the hallway but just a little
13 bit further down.

14 And I went in to see what the commotion was,
15 and it was Bray saying pretty loud "Well, that's the girl,
16 that's the Geneva France right there." And he was pointing
17 to the picture.

18 Q. At that point are you aware personally of how
19 Mr. Metcalf communicated to Agent Lucas that Mr. Bray had
20 identified Geneva France?

21 A. You know, I don't know when he did or how he did.

22 I can't recall.

23 Q. Okay. Thank you.

24 MR. COMBER: Nothing further, Your Honor.

25 THE COURT: All right. Cross-examination.

1 CROSS-EXAMINATION OF MATT MAYER

2 BY MR. ROTH:

3 Q. Sir, do you know -- let me get my microphone. I
4 thought I was better trained.

5 Sergeant Mayer, good morning.

6 A. Good morning.

7 Q. Do you know whether it was Lucas or Bray who
8 identified that photograph first?

9 A. Five years ago, I couldn't swear. I thought it was
10 Lucas -- or not Lucas, but Bray. Then I thought it was
11 forwarded on.

12 But it's been quite some time, so I don't want
13 to mislead you, but I thought it was Bray.

14 Q. Now, were you present when Mr. Lucas was shown that
15 photo?

16 A. I don't think I was. I can't remember it.

17 Q. Now, sir, I thought you indicated that what your
18 intention was was to get a photograph of the person that was
19 possibly the person that Bray said was Geneva?

20 A. Yes.

21 Q. And put it in a photo spread?

22 A. Yes.

23 Q. Okay. I take it that never happened?

24 A. No, that was the aggravating part of that. When
25 I -- when Bray said he seen her, I thought that shot that

1 to -- you know, what can you do once he sees it? You can't
2 ever take it back.

3 It kind of undermined the work we did, but
4 then again it also served as a benchmark so if, you know,
5 whoever or if Lee does an actual hand-to-hand buy to her,
6 he'd have an idea so if he testified, or at least he'd have
7 an idea who it was.

8 Q. Well, sir, I noticed that the photograph that you
9 selected -- and can we put it back up there?

10 MR. COMBER: Sure.

11 A. Has her name.

12 Q. Sir, I notice that photograph has a name on the
13 left-hand column. It says "France, Geneva."

14 A. That wouldn't be fair either, would it? It wouldn't.

15 This is my explanation for this. I create
16 original videotapes. I take original photographs. This,
17 indeed, on my camera if you pulled up the CD, it may have a
18 lot more information, but that -- so this photo, if it was
19 obtained through the actual one that was given to Lee or the
20 actual one in Metcalf's office, it very well, as you all
21 know, if you -- it's pretty common now to get on the
22 computer to develop your pictures.

23 You know, you can take a picture of me, you
24 can get my face, my uniform, the Judge in the background, as
25 much as you want, so I can't say this would accurately

1 depict what was showed.

2 It's the same picture, but I don't know how
3 much of the original showed Geneva France or not, and it
4 very well could have been right there and Bray could have
5 read it, for all we know.

6 I wasn't in there, and it wasn't meant to be
7 shown to him at that time so, you know, I couldn't control
8 that. That was in Metcalf's office. I don't think he -- or
9 he didn't expect that Bray would come in. Because I'm the
10 supervisor, I said, "Man, why did you show him that?" He
11 said "I didn't. He just seen it. When he came in it was
12 unexpected, it was laying there." That's his explanation to
13 me.

14 Q. Sir, were you present when he identified this photo,
15 or were you not?

16 A. I was in my office. I heard -- as I testified, I
17 heard this scuttlebutt, went over there, and after he told
18 Metcalf, he reiterated to me.

19 That's what happened.

20 Q. Okay. So you actually weren't present?

21 A. There on the first time, yes.

22 Q. You weren't present when he actually ID'd. You came
23 in later?

24 A. That's correct, sir.

25 Q. All right. Now, my question was: The photograph that

1 if they're -- or for the prosecutor, defense to ask me
2 direct questions about it, but, you know, up until just
3 recently, I didn't -- you know, I really didn't have a
4 chance to view it or decide if there were discrepancies or
5 intentional or just a matter of, you know, inaccurate
6 rewriting.

7 I don't even know if he wrote them. Maybe a
8 partner wrote them and he just -- I don't know. I didn't
9 have enough time or I didn't really get a chance to look at
10 them up until -- and I haven't seen all of them, I don't
11 think.

12 Q. All right. And you think the one on the Ballard deal
13 you saw for the first time yesterday?

14 A. Yeah. And it was in a -- some paperwork. It was
15 paperwork. Wonder if that means --

16 THE COURT: Check it, Maria.

17 A. There was, if I recall right, there's a part about
18 a -- about him seeing a black car, him pulling up close
19 before. I don't remember seeing that, but I'm in the back.
20 You could go by the video of how far it went in the lot, but
21 if I'm recalling right it was at the beginning there was a
22 paragraph he seen the drivers of the car.

23 And I didn't see them.

24 Q. All right. But that --

25 A. If I'm right.

1 A. No, I didn't. No, I didn't.

2 MR. COMBER: Thank you. No further questions.

3 THE COURT: Anything further, Mr. Roth?

4 MR. ROTH: Just one question.

5 RE CROSS-EXAMINATION OF MATT MAYER

6 BY MR. ROTH:

7 Q. Isn't it true, sir, that you have no personal
8 recollection of that event?

9 A. I think -- okay. I don't remember seeing it at all,
10 but if I would have pulled up to it, I believe that would be
11 a significant factor I'd remember all this time after if I
12 looked at them.

13 I'm not saying -- five years, I could be
14 wrong, but I'd say I'd remember that.

15 Q. Sir, did you just say after five years you could be
16 wrong?

17 A. I could be wrong, but my recollection is that we never
18 pulled up beside it, and the last I saw it was after it
19 pulled out and went up, down towards the left.

20 Q. Sir, before you looked at the video, your recollection
21 was that one vehicle went to the left and the other vehicle
22 went to the right?

23 A. Yes, I -- I can appreciate what you're saying and I
24 would use caution with what I say. It's five years old. I
25 didn't remember which way it went.

1 Q. Sir, directing your attention not to one of the buys
2 specifically in 2005, but at some point thereafter did you
3 become aware of an allegation that money had been stolen by
4 the confidential informant during one of those Mansfield
5 buys?

6 A. Yes, I did.

7 Q. Okay. Do you recall when it was that you came to
8 learn of the allegation that money had been stolen?

9 A. June 13th, 2007.

10 Q. Without getting into the specifics, what was told to
11 you?

12 How did you become aware?

13 A. I was told by Task Force Officer Verhiley that during
14 a purchase --

15 Q. Sir, again not -- I don't want to get into -- just so
16 the record is clear, I don't want to get into the
17 discussion.

18 MR. ROTH: No, no objection to the hearsay,
19 Your Honor.

20 Q. In that case what did Task Force Officer Verhiley tell
21 you?

22 A. He told me that at the conclusion of one of the buys,
23 he and another individual Task Force Officer Jamaal Ansari
24 were conducting a search of the informant and his vehicle.

25 At this time they found some currency that was

1 supposed to have been used for the -- to purchase drugs.

2 Q. Okay. And without getting into any greater detail
3 about the substance because that's not the focus of your
4 testimony, as a result of learning that --

5 MR. ROTH: No objection to the substance, Your
6 Honor.

7 Q. Okay. After that conversation, what did you do?

8 A. The next day, June 14th, I spoke with Task Force
9 Officer Ansari.

10 Q. And what did Task Force Officer Ansari tell you?

11 A. He confirmed with -- he confirmed what Task Force
12 Officer Verhiley had said, and they had both told me that
13 they had informed Special Agent Lucas at the time when they
14 discovered the money.

15 Q. Okay. As a result of learning of the allegation of
16 theft by the confidential source, what did you do?

17 A. On June 15th, during a conversation I was having with
18 Mr. Lucas, I asked him if the informant had stolen some
19 money.

20 And I --

21 Q. And how did Mr. Lucas respond?

22 A. He told me that it was not true; that if any informant
23 would have stolen money, he would have beat him.

24 I said "That's right, Lee. I believe that's
25 how you operate. You would never call time out, report

1 him."

2 He also said that anyone that said that, that
3 they were liars.

4 I said "So Jamaal and Tom are lying? Let's
5 get them in here."

6 At that time he left my office.

7 Q. Okay. After he left your office, did he return after
8 a certain period of time?

9 A. Yes, approximately 20 to 30 minutes later.

10 Q. And what happened when Agent Lucas returned to your
11 office?

12 A. He came in, he was visibly shaken, he was red in the
13 face, he was crying, and he asked me not to report it.

14 I said no, I wasn't going to do that.

15 Q. Did you ever, in fact, report it?

16 A. Yes, I did, later that day.

17 Q. Okay. To whom did you report it?

18 A. Assistant Special Agent in Charge Anthony Marotta.

19 Q. Okay. Had you become aware of the information in
20 September of 2005 at the time of the buy itself, what would
21 you have done as a result of learning of that allegation?

22 A. We would have had to stop the investigation, report it
23 to the United States Attorney handling the case what had
24 occurred, and then we'd have to put everything on hold, we
25 should have put everything on hold until we investigated it.

1 Q. Okay. Are you aware of what the case status was by
2 that point in June of 2007 with respect to the Mansfield
3 cases?

4 Where were they in the prosecutorial life
5 span?

6 A. I believe that was at the time when they were
7 beginning to dismiss all the cases.

8 Q. Okay. Later did you become aware of an allegation
9 that an officer on the scene during a separate buy that was
10 part of the Mansfield buys had indicated to Agent Lucas that
11 the person who was charged was, in fact, not the person who
12 was present for the buy?

13 A. Yes.

14 Q. When did you learn of that allegation?

15 A. During late October of 2007.

16 Q. Had you learned of that allegation, that another
17 officer had contradicted Agent Lucas's identification at the
18 time of the buy, had you learned of that information at the
19 time of the buy in October, 2005, what would you have done?

20 A. It would have been reported and once again the
21 investigation would have been stopped momentarily to look
22 into that, to see, to try to prove if that was true or
23 false.

24 Q. Okay. When you learned of that allegation in October,
25 2007, did you, in fact, report it to anyone?

1 (Witness excused)

2 THE COURT: Call your next witness.

3 MR. COMBER: Thank you, Your Honor. We call
4 Detective Dawn Brown.

5 DAWN BROWN,
6 of lawful age, a witness called by the Government,
7 being first duly sworn, was examined
8 and testified as follows:

9 DIRECT EXAMINATION OF DAWN BROWN

10 BY MR. COMBER:

11 Q. Good afternoon, Detective.

12 A. Good afternoon.

13 Q. Could you please state your name, spelling your last
14 name for the record?

15 A. My name is Dawn Brown, B-R-O-W-N.

16 Q. Detective, how are you employed?

17 A. I'm employed by the Richland County Sheriff's Office.

18 Q. How long have you been with Richland County Sheriff's
19 Office?

20 A. Over 27 years.

21 Q. Okay. Could you briefly summarize for our jury your
22 law enforcement training and experience before joining
23 Richland County?

24 A. My training was after I was hired with Richland County
25 and I received my certificate after graduating from the Ohio

1 Offered for cross.

2 THE COURT: All right. Mr. Roth, you may
3 cross-examine.

4 MR. ROTH: Thank you, Judge.

5 CROSS-EXAMINATION OF DAWN BROWN

6 BY MR. ROTH:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. Now, ma'am, were you involved in any of the pretrial
10 preparation in the Nabors trial?

11 A. No.

12 Q. For the Nabors trial?

13 A. No, I was not.

14 Q. I believe the Nabors trial happened in July of 2006,
15 and it was -- the prosecutor was Mr. Serrano.

16 Did Mr. Serrano ever make an appointment with
17 you and sit down and talk to you about what you remembered
18 or what you knew about the Nabors case?

19 A. No, he did not.

20 Q. Okay. So when was the first time after
21 September 20th, 2005 that you ever spoke to anyone about the
22 surveillances that occurred, that you engaged in on that
23 date with respect to, for want of a better term, the Nabors
24 surveillance?

25 A. I was contacted by the Department of Justice, I

1 which you drafted these?

2 A. Initially when this investigation started I had some
3 concerns over some of the methods used during the
4 investigation, and for -- as a police officer we learn that
5 for our own protection and for liability reasons that
6 sometimes it's a good idea to keep notes if we have
7 concerns.

8 Q. Okay. And would it be fair to say that these notes
9 that you started begin on about February the 4th of 2005?

10 A. Yes.

11 Q. Okay. So your concerns began long before DEA got
12 involved, correct?

13 A. I had some operational concerns, yes.

14 Q. And your concerns were with the way, I guess, some of
15 the people in Richland County were handling Mr. Bray?

16 A. It was contrary to the way that I was trained, yes.

17 Q. Okay. And even though you were with the Richland
18 County Sheriff's Office, you were a permanent member of the
19 METRICH unit, correct?

20 A. Well, not permanent, but I was assigned to METRICH.

21 Q. Okay. But was that on a long-term basis?

22 A. It's basically at the Sheriff's will and pleasure.

23 Q. Okay. By 2005, how long had you been with METRICH?

24 A. Since 1995.

25 Q. Okay. So for ten years already?

1 specifically on Page 2, the first full paragraph.

2 Preliminarily let me ask you a question.

3 Prior to coming here today, did you have an
4 opportunity to review this?

5 A. Yes.

6 Q. Okay. And this was the report of interview of you on
7 November the 18th, 2008?

8 A. Yes.

9 Q. Okay. And on Page 2, there's a reference to you being
10 shown the DEA-6 of the Nabors buy, correct?

11 A. Yes.

12 Q. And would it be accurate that the only thing you
13 reported as being inaccurate after reviewing the report was
14 that you did not see Bray throw money into the black
15 Cadillac as reported in Page 3 of the DEA-6?

16 A. I did report that. I also provided the information
17 that I just gave to you.

18 Q. Okay. Well, let's look at the reference that's in
19 this report.

20 If you could, do you have Volume 1 up there?

21 MR. ROTH: Your Honor, could I approach and
22 assist her to get the report?

23 THE COURT: Sure.

24 MR. ROTH: It might save some time.

25 THE COURT: Just to get her oriented.

1 MR. ROTH: Here. (Indicating).

2 BY MR. ROTH:

3 Q. And that would be at Page 30, under Volume 1, 1-A.

4 I would ask you to take a look at Page 10 --

5 I'm sorry -- Paragraph 10 of that report.

6 And if you could read it to yourself, please.

7 (Pause).

8 Have you read Paragraph 10?

9 A. Yes.

10 Q. Okay. And is the incident that's reflected in
11 Paragraph 10 the incident that you took exception to during
12 your interview?

13 A. I simply stated I did not witness it.

14 Q. Okay. And would you agree that in Paragraph 10, it
15 does not say that you witnessed it; it says that you and
16 Mr. Lucas drove by and he witnessed it?

17 A. Yes.

18 Q. Okay. Now, going back to 460 Hill, would it be
19 important if you're going to be on surveillance at that
20 location to drive by that location at least once before the
21 deal so that if there's an emergency or if something
22 happens, you know where to respond?

23 A. Most often we do know where to go, yes.

24 Q. Well, were you familiar with the Hill Street location
25 before that night?

1 A. No, I was not.

2 Q. And did you believe that Mr. Lucas was?

3 A. I assumed that he was.

4 Q. And why would you assume that?

5 A. Because it was his investigation; not mine.

6 Q. Well, ma'am, was there any pre-knowledge before that
7 date that there would ever be a deal at 460 Hill?

8 A. Not my knowledge, no.

9 Q. Okay. Now, after the second leg of the deal after
10 Pleasant Street, you go back to the Richland County
11 Sheriff's Office, correct?

12 A. Yes.

13 Q. And would it be fair to say that all the agents and
14 officers involved in that deal had to wait about four or
15 five hours for the next leg to occur?

16 A. It was a long period of time.

17 Q. Okay. And would it be fair to say that it wasn't
18 until right before the deal that you all knew that it was
19 going to take place on Hill?

20 A. I believe that to be accurate.

21 MR. ROTH: I have nothing further, Your Honor.

22 THE COURT: Anything further?

23 MR. COMBER: Thank you, Your Honor.

24

25

1 REDIRECT EXAMINATION OF DAWN BROWN

2 BY MR. COMBER:

3 Q. Detective, you were just asked about the time you
4 spent waiting at the Richland County Sheriff's Office in
5 between stages two and three of the deal.

6 Did you ever hear any discussions between
7 Mr. Lucas and Mr. Metcalf about the potential for putting
8 together a federal conspiracy case?

9 MR. ROTH: Objection. Hearsay.

10 MR. COMBER: Your Honor, I asked if she had
11 firsthand knowledge of those conversations.

12 THE COURT: Okay. Did she hear a conversation
13 regarding that?

14 You're not to the details yet.

15 MR. COMBER: Correct, Your Honor.

16 THE COURT: All right.

17 A. Yes, I did.

18 MR. COMBER: Your Honor, the next question is
19 going to get into the details, if I could make a proffer at
20 side-bar if the Court wishes.

21 THE COURT: Okay.

22 MR. ROTH: Your Honor, I have no objection.

23 THE COURT: Okay.

24 MR. ROTH: I withdraw my objection.

25 THE COURT: Okay.

1 BY MR. COMBER:

2 Q. Please explain what you heard.

3 A. The only thing I can tell you is that I heard them
4 discussing putting a conspiracy together with numerous
5 individuals to be prosecuted federally.

6 I was not privy to the actual investigation;
7 only bits and pieces of it when we were asked to assist
8 them.

9 My concern at the time was that Jerrell Bray
10 was also at the Sheriff's Department and seemed to be able
11 to access the entire area where the officers were, and my
12 concern was that by giving him that information, obviously
13 he would know who law enforcement wanted to target.

14 Q. Why did that concern you?

15 A. For safety reasons. For -- because with my training
16 and experience, we're taught never to discuss operational
17 plans in front of an informant.

18 Q. What is the basis for that teaching, do you know?

19 A. Entrapment and safety are big issues.

20 Q. Mr. Roth likewise referenced what is in front of you
21 under Tab 1-A at Number -- excuse me -- Page Number 30.

22 If you could again look to Paragraph 10, the
23 paragraph Mr. Roth directed your attention to.

24 In the second sentence, who does Mr. Lucas in
25 his report indicate that he drives by the Pleasant Street

1 meeting with?

2 A. Myself.

3 Q. Further down on that page you'll see Paragraph 13.

4 Please read that to yourself.

5 (Pause) .

6 Did you personally observe either of those
7 referenced Cadillacs parked around 460 Hill that night?

8 A. I did not.

9 Q. Are you aware of anyone else observing either of those
10 Cadillacs parked around 460 Hill that night?

11 A. No.

12 Q. On the page before, at Paragraphs 5 and 6, is there
13 any reference whatsoever to you being present at Platinum
14 Status that day?

15 A. No.

16 Q. Did the fact that you almost got burnt in your
17 surveillance at Pleasant in any way impact where you set up
18 for the Hill buy?

19 A. We're always extremely cautious, and again especially
20 when there's an undercover police officer. We knew he was
21 not familiar with the location.

22 But because of the location of Hill Street or
23 Hill Avenue, it was just impossible to set up surveillance
24 any closer.

25 Q. Do you specifically remember being at the Platinum

1 would say if they had testified?

2 A. Well, they never said anything.

3 All they said was they wanted to assert their
4 rights to the Fifth Amendment. It was nothing further
5 discussed outside of that.

6 Q. Okay.

7 MR. ROTH: I have nothing further, Judge.

8 THE COURT: All right. Anything further?

9 MR. TEITELBAUM: No, sir.

10 THE COURT: You may step down, sir.

11 (Witness excused).

12 THE COURT: Call your next witness.

13 MR. COMBER: Thank you, Your Honor. The
14 government would call Mr. Charles Metcalf.

15 THE COURT: Come all the way down to the
16 front. Go ahead, step up. Before you take your seat, my
17 deputy will swear you in.

18 THE WITNESS: Okay. Thank you, sir.

19 CHARLES METCALF,
20 of lawful age, a witness called by the Government,
21 being first duly sworn, was examined
22 and testified as follows:

23 DIRECT EXAMINATION OF CHARLES METCALF

24 BY MR. COMBER:

25 Q. Good morning, sir.

1 A. No.

2 Q. Sir, in front of you is several binders. One of them
3 is a smaller binder marked "Volume 1."

4 Would you please take that binder and turn to
5 Tab 1-A? Down in the bottom right, you'll see a Bates
6 label. Please turn to Page 00040.

7 Please read Paragraphs 4, 5 and 6 to yourself.

8 A. I may be wrong on this one.

9 MR. COMBER: May I approach, Your Honor?

10 THE COURT: You may.

11 THE WITNESS: Page 40?

12 MR. COMBER: Okay. Right here.

13 BY MR. COMBER:

14 Q. For the record, Detective Metcalf, correctly
15 clarified, the 6 starts on Page 40. The paragraphs I
16 referenced were on Page 41.

17 A. Okay.

18 Q. Please read Paragraphs 4, 5 and 6 slowly to yourself.

19 (Pause) .

20 A. Okay.

21 Q. Sir, do you recognize this document?

22 A. I don't recognize it. This is the first time I've
23 seen it.

24 Q. Okay. Did you make any of the observations that are
25 attributed to you in Paragraphs 4, 5 and 6?

1 A. No, I didn't see Roosevelt Williams.

2 Q. Did you tell Mr. Lucas that you saw Roosevelt
3 Williams?

4 A. No.

5 Q. Do you know a Detective Perry Wheeler?

6 A. Yes.

7 Q. Who is Detective Perry Wheeler?

8 A. He works for the METRICH drug task force.

9 Q. To your knowledge, was Detective Wheeler involved in
10 the buy that was supposed to be off of Roosevelt Williams?

11 A. Correct.

12 Q. Do you know what Detective Wheeler's role for that buy
13 was?

14 A. Again security, surveillance.

15 Q. At some point after the buy took place, did you
16 observe a conversation between Detective Wheeler and Agent
17 Lucas?

18 A. Yes.

19 MR. ROTH: Judge, I object. Side-bar, if we
20 could, please.

21 (Proceedings at side-bar:)

22 MR. ROTH: Your Honor, it's my understanding
23 that he did not observe this but heard about it later, so I
24 would object on the grounds of hearsay.

25 MR. COMBER: Your Honor, and it will be

1 clarified through his testimony, I will in no way get into
2 any hearsay about the discussion between Mr. Wheeler and
3 Mr. Lucas.

4 Next question is going to be "After you saw
5 that conversation, what next occurred" and it's a statement
6 from Mr. Lucas to Mr. Metcalf.

7 THE COURT: Okay.

8 MR. COMBER: That's why I was being careful to
9 phrase the question as I did.

10 MR. ROTH: Withdraw the objection.

11 THE COURT: All right.

12 (End of side-bar conference).

13 BY MR. COMBER:

14 Q. Sir, after you observed this conversation between
15 Detective Wheeler and Agent Lucas, what did you personally
16 observe Agent Lucas do?

17 A. He came up to me.

18 Q. Okay. What happened when he came up to you?

19 A. He told me that Perry Wheeler and himself -- Perry
20 Wheeler had told him that it was not Roosevelt Williams.

21 Q. Did Detective -- excuse me -- did Agent Lucas say
22 anything else to you at that time?

23 A. Yeah, he wanted to see a picture.

24 Q. Picture of who?

25 A. Roosevelt Williams.

1 Q. Were you able to provide him with a picture of
2 Roosevelt Williams?

3 A. Yes.

4 Q. Tell us how that happened.

5 A. It must have been in one of our prior files. It
6 wasn't a regular BMV image because I don't think he was from
7 Ohio.

8 And Lucas looked at it and positively
9 identified him as Roosevelt Williams, the guy that was in
10 the car.

11 Q. Take us through specifically what happens when you
12 observe Agent Lucas look at this picture.

13 A. Rephrase that again.

14 Q. You saw Agent Lucas look at the picture?

15 A. Yes.

16 Q. Describe what happens when he looks at the picture.

17 A. He said "That was the guy."

18 Q. Did you have any further discussions with Agent Lucas
19 about Detective Wheeler?

20 A. Not that I recall. I mean, no.

21 Q. Was Detective Wheeler referenced as observing the
22 person thought to be Roosevelt Williams in any of those
23 paragraphs in the DEA-6 that you read?

24 A. No.

25 Q. Was there any mention of Detective Wheeler in any of

1 those paragraphs that you read?

2 A. No.

3 Q. After Agent Lucas looks at the picture of Roosevelt
4 Williams, what happens next?

5 A. It was over with.

6 Q. When you say "It was over with," what are you
7 referring to?

8 A. The deal was over with.

9 Q. Okay. At any point that day did you observe Detective
10 Wheeler come back to the Sheriff's Office?

11 A. I don't remember him coming back.

12 I remember there was either a phone call came
13 in to Captain Faith or myself. I don't remember, I was
14 probably in my office.

15 Q. Okay.

16 A. I don't remember the contents of it.

17 Q. Sir, just so the record is clear, I'm not asking you
18 about contents of a phone call you didn't hear.

19 Just asking you your recollection. Do you
20 personally recall Detective Wheeler coming back to the
21 Sheriff's Office?

22 A. I don't remember him coming back.

23 Q. Okay. I want to move on to another deal that was
24 supposedly done with a woman by the name of Geneva France.

25 Do you recall that deal, sir?

1 MR. COMBER: Could I have a very brief moment,
2 Your Honor?

3 THE COURT: You may.
4 (Pause).

5 MR. COMBER: Thank you, Your Honor.

6 BY MR. COMBER:

7 Q. Sir, at some point after -- sir, again in the book in
8 front of you at Tab 1-A, the lower right corner, the 6
9 begins at number 00059.

10 Directing your attention on Page 60 to what is
11 marked Paragraph 5, I would again ask you to read that
12 quietly to yourself.

13 A. Page 60?

14 Q. Please. Paragraph 5.

15 (Pause).

16 A. Okay.

17 Q. At any time did you make the observation attributed to
18 you in Paragraph 5?

19 A. No.

20 Q. At any time did you tell Agent Lucas that you made the
21 observation attributed to you in Paragraph 5?

22 A. No.

23 Q. At some point after you had finished making all these
24 various buys, were a series of search warrants executed?

25 A. Yes.

1 Q. Okay. At some point did you express to anyone a
2 concern about your ability to write a historical search
3 warrant?

4 A. Yes.

5 Q. Tell us what happened.

6 A. I contacted Lee Lucas, and he was familiar with a
7 historical search warrant.

8 It was -- again I don't know how it got down
9 here. I'm reasonably certain it was an e-mail.

10 Q. Let me take you step by step, sir.

11 A. Okay.

12 Q. When you say you contacted Agent Lucas, what did you
13 say?

14 A. I wasn't real familiar how to do a historical search
15 warrant for drugs.

16 Q. What did he tell you?

17 A. It was not a problem; they could do it.

18 Q. Pardon me, sir?

19 A. It was not a problem; they could do it.

20 Q. Do you know to whom he was referring to when he said
21 they could do it?

22 A. I'm assuming the DEA.

23 Q. What happened next?

24 A. I believe I received it in an e-mail.

25 Q. What did you receive in an e-mail?

1 A. The actual affidavit, the warrant and the affidavit.

2 Q. In that same small book in front of you, sir, I ask
3 you to turn to Tab 2-A. For the record, Volume 1.

4 A. Okay. Can you tell me what page?

5 Q. Certainly. 00123.

6 A. Okay.

7 Q. Take a moment and review to yourself that which is
8 behind Tab 2-A.

9 (Pause) .

10 Do you recognize this document, sir?

11 A. Yes, I do.

12 Q. What is it?

13 A. It is a search warrant with the affidavit attached.

14 Q. Which search warrant, sir?

15 A. 20 Sunset.

16 Q. Is this the warrant you were referring to as having
17 difficulty drafting because it was a historical warrant?

18 A. Correct.

19 Q. Directing your attention to what is Page A 11 in the
20 warrant.

21 A. Um-hmm.

22 Q. And the Bates Number on the bottom right, it's 137.

23 A. I'm there.

24 Q. Okay. Sir, in the middle of the page where it says
25 "Affiant," is that your signature?

1 A. Yes.

2 Q. And whose signature is below you?

3 A. Jerry Alt.

4 Q. Who is Jerry Alt?

5 A. Judge, Mansfield Municipal Court.

6 Q. Okay. Is that the Judge before whom you swore out
7 this warrant?

8 A. Yes.

9 Q. Okay. Is he also the Judge before whom you swore out
10 the other warrants?

11 A. I believe so, yes.

12 Q. Do you recall whether those other warrants that you
13 wrote that day were presented at about the same time as this
14 warrant?

15 A. I think every one of them was at the same time.

16 Q. Okay. Sir, the content of this warrant that describes
17 what you called probable cause, did you actually write the
18 content?

19 A. No.

20 Q. Where did you get the content from?

21 A. I should change that. My pedigree is in here.
22 Somebody had to put that in here.

23 Q. When you say "pedigree," what do you mean?

24 A. Well, the history of what you are. You've got to put
25 in the law enforcement so many years, you've investigated

1 narcotics squad -- narcotic cases or theft cases or
2 whatever.

3 It's just basically an outline of you, that
4 you're the affiant.

5 Q. Similar to what we went through when we asked the
6 initial questions here today?

7 A. Yes.

8 Q. Okay. Separate from your pedigree and other details,
9 did you actually write the information that sets out the
10 specific probable cause in the warrant?

11 A. No.

12 Q. Specifically, directing your attention to Bates
13 numbers 131, it's Page A 5 of the warrant so six pages
14 earlier.

15 A. I'm there.

16 Q. Beginning at that bottom paragraph, "On 9/20/05,
17 SA Lee Lucas and Detective Metcalf interviewed the CRI."

18 Did you write that actual information?

19 A. No.

20 Q. Have you personally used the term "CRI" before?

21 A. No.

22 Q. And do you know what it was meant to be an
23 abbreviation for?

24 A. Confidential something. I don't know.

25 Q. In this case referring to whom?

1 A. I imagine Jerrell Bray.

2 Q. Okay. Sir, before getting up and swearing this
3 warrant out to Judge Alt, did you review in detail the
4 content of the information that was provided to you?

5 A. No, I didn't. I scanned it. I don't remember who
6 added the pedigree in because if it was me it would have
7 been all caps because that's just the way I type a warrant,
8 instead of similar to this.

9 Everything I do is in all caps.

10 Q. Sir, please explain to the jury, though, if you are
11 swearing under oath --

12 A. Um-hmm.

13 Q. -- to a State Court Judge --

14 A. Um-hmm.

15 Q. -- information that you say gives you justification to
16 search someone's house --

17 A. Correct.

18 Q. -- how could you not have read it before you swore
19 under oath?

20 A. If you look at the date, it says 11/9. We hit
21 everything on 11/10, number one.

22 Number two, there was probably four or five
23 search warrants.

24 I scanned it. It looked okay to me. And
25 again I wasn't real familiar with it.

1 Q. Okay.

2 A. And I looked at it and it looked good to me. And did
3 I read every portion of it? No.

4 Q. Specifically, sir, if you could turn to the next page.

5 A. Which one is that?

6 Q. A 6.

7 A. What number?

8 Q. Bates Number 132.

9 A. Okay. Go ahead.

10 Q. The paragraphs aren't numbered, but the bottom
11 paragraph, the one that begins "At approximately
12 3:26 p.m." --

13 A. Um-hmm.

14 Q. Would you read that paragraph in full to yourself?

15 A. Yes. Okay.

16 Q. Sir, did you make the observation attributed to you in
17 that paragraph? Specifically, did you observe Dwayne Nabors
18 and an unidentified black male arrive driving a black
19 Cadillac?

20 A. No, I did not.

21 Q. And this is referring to the Platinum Status buy,
22 correct?

23 A. Right.

24 Q. Okay. Did you tell Agent Lucas that you did?

25 A. No.

1 Q. Going on to the next paragraph at the top of Bates
2 133, please read that to yourself.

3 (Pause) .

4 A. No.

5 Q. Sir, we have to go step-by-step.

6 Having read that to yourself, did you make the
7 observation attributed to you in that particular paragraph?

8 A. Not that I remember, no.

9 Q. Did you ever tell Agent Lucas that you observed Dwayne
10 Nabors and what's written here is FNU LNU to depart in that
11 Cadillac?

12 A. No.

13 Q. For the record, FNU LNU is a common law enforcement
14 abbreviation, right?

15 A. Not for us.

16 Q. Not for Richland County?

17 A. No.

18 Q. Did you even know what FNU LNU meant at that point in
19 time?

20 A. Yes.

21 Q. At that point in time did you know?

22 A. No.

23 Q. What do you now know it to be?

24 A. First Name Unknown Last Name Unknown.

25 Q. Sir, if that warrant contained observations that you

1 didn't make, nor did you ever tell Agent Lucas you made, why
2 did you swear it out in front of a State Court Judge?

3 A. Because I just briefed it, thought it was right. We
4 was in a hurry. There was, I think, four or five search
5 warrants.

6 Q. Did you specifically see those statements before you
7 went to in front of the Judge?

8 A. No.

9 Q. Had you seen them, would you still have taken that
10 warrant in front of the Judge?

11 A. I probably would have had to change some things.

12 Q. Did you, in fact, obtain the warrant for that Sunset
13 house?

14 A. Yes.

15 Q. Sir, you indicated that there was a difference in
16 format between this warrant and your other warrants.

17 A. Um-hmm.

18 Q. How did the format differ from one warrant to another?

19 A. This is almost in a book form, paragraph by paragraph.
20 The ones I did are the -- or the ones that we
21 did at that point were what we call points, number one, two,
22 three, four, five, six, seven, eight, nine and they are all
23 in capital letters.

24 And the drug part of the search warrant was
25 boilerplate. You know, we'd just say we was looking at this

1 Q. He was the prosecutor on that case?

2 A. Yes.

3 Q. We have multiple page numbers for each page. You see
4 in the top right how it actually has the page of the
5 transcript?

6 A. Yes.

7 Q. Okay. Those are going to be the numbers I refer to,
8 just so we don't get ourselves confused, okay?

9 A. Okay.

10 Q. Ask you to turn to transcript Page 925, and read to
11 yourself from Line 25 through to the next page, Line 7.

12 (Pause).

13 A. Okay.

14 Q. Sir, specifically Line 25, you were asked whether you
15 conducted any video surveillance at Platinum Status.

16 How did you answer?

17 A. No.

18 Q. Earlier you indicated that there was video
19 surveillance, and we viewed a portion of it.

20 Why would you testify here under oath there
21 wasn't video surveillance?

22 A. Lied.

23 Q. Why?

24 A. I can't give you a straight out answer on that.

25 Just did.

1 Q. Please move ahead to also Page 926, Lines 12 to 23.

2 Please read those to yourself.

3 A. Yes.

4 Q. Specifically, Lines 21 to 23, you testified that you
5 went left on Park Avenue and Officer Lucas and you both
6 identified the driver as Dwayne Nabors.

7 Sir, is that true?

8 A. No.

9 Q. Why is it you testified under oath to having
10 identified Dwayne Nabors?

11 A. Probably because I regurgitated what come off the
12 DEA-6 report.

13 Q. Let's talk about that for a moment.

14 Again what is the DEA-6 report?

15 A. This is the report of the actual event of the drug
16 buy. I'm not real familiar with it. That's what it is.

17 Q. What's the purpose -- sir, what's the purpose?

18 A. To say what took place, the drug buy, how it happened.
19 Similar to our general offense report.

20 Q. Did you have your own general offense report written
21 about the Nabors buy?

22 A. We had one but there was nothing, no statements, no
23 follow-ups, no nothing in it, but it was just used to keep
24 video or what have you in it.

25 There was no -- we had no follow-ups or